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# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

## No. 145.

JAMES B. SWING, TRUSTEE, &c., PLAINTIFF IN ERROR,

*vs.*

THE WESTON LUMBER COMPANY.

## BRIEF FOR THE DEFENDANT IN ERROR.

EDWARD C. CHAPIN,
*Counsel for Defendant in Error.*

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(19,957.)

# SUPREME COURT OF THE UNITED STATES.

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## No. 145.

JAMES B. SWING, AS TRUSTEE FOR THE CREDITORS OF THE UNION MUTUAL FIRE INSURANCE COMPANY OF CINCINNATI, OHIO (FORMERLY A CORPORATION), PLAINTIFF IN ERROR,

*vs.*

THE WESTON LUMBER COMPANY (A CORPORATION), DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF MICHIGAN.

## BRIEF FOR DEFENDANT IN ERROR.

### STATEMENT.

This action was commenced by plaintiff in error in the circuit court of Schoolcraft county, Michigan, to recover from defendant in error, a Michigan corporation, doing business in said Schoolcraft county, an alleged due proportion of the unpaid liabilities of said insurance company, claimed to have been incurred during the time said defendant held a policy of insurance therein, covering property in said Schoolcraft county.

A written stipulation was offered in evidence on the trial that plaintiff in error was a corporation organized under the laws of the State of Ohio, and that it had never complied with

any of the requirements of the several statutes of the State of Michigan obligatory upon insurance companies of other States seeking to transact business in the State of Michigan.

Record, 37–38.

Defendant in error does not admit the allegation in the statement of plaintiff in error in his brief that "no act in regard to said policy was done in Michigan by any one representing said insurance company," but, on the contrary, claims that the business was transacted in Michigan by one representing the insurance company, and in direct violation of the Michigan statutes.

## ARGUMENT.

The first claim of plaintiff in error is that the insurance agent who obtained the policy of insurance from the Ohio Company was the agent of the Weston Lumber Company, and not the agent of the insurance company.

In September, 1889, the Manistique Bank of Manistique, Schoolcraft county, Michigan, was engaged in banking, insurance, and mortgage loan business, and was carrying insurance in various companies on the property of the Weston Lumber Company. Wishing to increase the amount of insurance, application to this effect was made to said bank. One Willis C. Marsh, an employee of said bank, transacted the business. On page 9 of the Record he says: "There were twelve policies altogether, secured through C. H. Spencer & Co. to increase the line that we had in these companies' lumber, and the policies that we had through the bank from other sources were not sufficient, and in the regular course of business we applied for this agency, and they furnished these two policies, together with others."

Again (Record, 9): "So far as I know the original application for this insurance was made to C. H. Spencer & Co. through me, the Weston Lumber Company first applying to the bank."

Again (Record, 10): "I had placed considerable insurance with the agencies my bank represented on this same lumber, and the same agencies were not able to carry the insurance to as large an amount as the company wanted to place, so they requested me to secure some other insurance for them, as I remember it they asked for an amount of insurance which was raised from different sources. They were familiar with the fact that I could not furnish that amount in the agencies I had in the bank."

The Weston Lumber Company and the Manistique bank were separate and distinct corporations, one engaged in the lumber business and the other in the insurance and other business.

If the bank and Mr. Marsh were the agents of the insurance companies in which they placed the insurance of the lumber company, it would seem to follow that they were the agents of all the companies carrying the insurance. There is nothing to show that the lumber company gave any directions relating to the insurance or did anything more than make the ordinary request in such cases.

It is fair to conclude from the testimony of Mr. Marsh that the policies in question were sent to him or to the bank and were delivered to the lumber company on payment of the premiums to the bank or Mr. Marsh. The policies were written in Cincinnati, but they were not valid until countersigned in Minneapolis.

Record, 31.

The negotiations were commenced and closed at the bank in Manistique.

The situation is well stated by Judge Steere. Speaking of Mr. Marsh (Record, 40–41), he says: "He was an employee of the local insurance agency which had secured a line of insurance from the defendant.

"The defendant thereafter, on its part, merely applied to this agency in its own home town for an increase of insurance, which the agency accepted and proceeded to place it

as best it could, turning that which it could not care for itself over to other agencies.

"The selection of this particular insurance company in which to place a portion of the risk was evidently made in the usual course of business either by the local agent at Manistique or George R. Lewis & Co., of Minneapolis, Minnesota, and the details of the application, obtaining the policy, agreeing on the policy, etc., were worked out in the usual course of business by the insurance agency, although accepted and ratified by the defendant. But so far as the defendant was concerned its application for insurance was made and this business done with the home office at Manistique with which it was in the habit of doing business."

The case is not one between a resident of Michigan and a foreign corporation where the contract was made by correspondence, but is one brought about and completed in the State of Michigan by a representative of the foreign corporation.

There is no doubt of the power of the State to prohibit foreign insurance companies from doing business within its limits. The State can impose such conditions as it pleases upon the doing any business by those companies within its borders, and unless the conditions be complied with the prohibition may be absolute.

Hooper *vs.* California, 155 U. S., 648.

The power above stated has been exercised by the State of Michigan, and the same has been sustained by its supreme court.

Seamans *vs.* Temple Co., 105 Mich., 401.

Swing *vs.* Weston Lumber Co., Record, 43.

We submit that the record in this case shows that the plaintiff in error transacted its business within the State of Michigan and in violation of its laws, and that the judgment of the supreme court of Michigan should be affirmed.

EDWARD C. CHAPIN,
*Counsel for Defendant in Error.*